



MEMORANDUM

To: PLANNING COMMISSION

Date: June 13, 2006

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: DEVELOPMENT AGREEMENT AMENDMENT DAA: 04-05: Barrett-Odishoo

REQUEST

The applicant is requesting an amendment to an approved development agreement to allow for an exception to the loss of 5 building allocations awarded for FY 2005-06 to the Villas of San Marcos development located on the southwest corner of the intersection of Barrett Ave. and San Ramon Dr.

Specifically the request is for a 6-month extension to the June 30, 2006 commencement of construction deadline.

RECOMMENDATION

Environmental Assessment: Not applicable

Application: Resolution approving a 3-month extension is attached.

Processing Deadline: November 11, 2006

BACKGROUND/CASE ANALYSIS

In September 2005, the City Council and Planning Commission approved of a 36-lot subdivision and development agreement for the Villas of San Marcos development. Exhibit B of the development agreement required that 5 (FY 05-06) building permits be submitted for, obtained and construction commenced by November 30, 2005, March 30, 2005 and June 30, 2006, respectively.

In October 2005 the project received ARB approval of the site, architectural and landscape plan approval. The development agreement requires the applicant to submit for building permits by November 30, 2005. The applicant submitted plans to the Building Division on April 5, 2006 and comments were returned to the applicant on May 3rd. Approximately 2 months are needed to complete the building plan check process.

The project development agreement requires the final map, improvement plans and bonds for the FY 2005-06 allocations to be submitted by September 30, 2005. On November 18, 2005, the applicant submitted a final map application to the Public Works Department for processing. On December 20, comments were returned to the applicant and the applicant responded with revised set of plans on February 7, 2006. Comments on the February 7 submittal were returned to the applicant on March 9. On March 24 the applicant submitted revised plans and on April 13 the applicant received a request from the Public Works Department to meet. A meeting was held on April 27 to discuss changes to the off-site commitment for the project. As a result the applicant revised the off-site improvement plans to include new off-site commitments and resubmitted to the City on May 9. The City has yet to respond to the May 9 plans. The Public Works Department acknowledges the last minute change in the off-sites commitments will delay the project for at least 2-3 months.

Due to the uncertainty in meeting the June 30 deadline, the applicant is requesting a 6-month extension of the June 30th "commencement of construction" date. The reason cited for the project delay is the Public Works Department's April 27 request to change the off-site improvements required of the project (see applicant's attached letter).

In accordance with section 18.78.125 of the Municipal Code, exceptions to the loss of building allocations may be granted if a project was delayed due to circumstances beyond its control and not a result of developer inaction. It appears that a three month delay has been caused by the City. However, the applicant was four month late in submitting for building permits and two month late in applying for a final map.

RECOMMENDATION

The applicant is requesting a 6-month extension due to a delay caused by the Public Works Department. The Public Works Department acknowledges a three month delay due to their April 27 request. However, other areas where the project has fallen behind schedule, were a result of developer inaction. As a compromise, staff recommends approval of only a 3-month extension to the "obtain building permits" and "commence construction" dates for the 5 building allocations awarded for FY 2005-06. It is recommended that the Commission recommend Council approval of the Development Agreement amendment as shown in the modified Exhibit B attached to the Commission's approval resolution.

Attachments:

1. Applicant's letter
2. Resolution

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA-04-05 FOR APPLICATION MP-02-22 AND MC-04-13: BARRETT-ODISHOO TO ALLOW FOR A THREE MONTH EXTENSION OF TIME TO OBTAIN BUILDING PERMIT AND FOR COMMENCEMENT OF CONSTRUCTION FOR 5 ALLOCATIONS RECEIVED IN THE 2003 RDCS COMPETITION. (APNS 817-33-003)

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 35 building allotments for applications MP-02-06 & MC 04-13: Barrett-Odishoo; and

WHEREAS, in September 2005, the City Council approved the development agreement for application MP-02-06 & MC 04-13: Barrett-Odishoo; and

WHEREAS, the applicant is requesting to amend the approved development agreement to allow for a 3-month extension to the "commence construction" deadline for the 5 building allotments awarded for FY 2005-06; and

WHEREAS, said development agreement amendment was considered by the Planning Commission at their regular meeting of June 13, 2006, at which time the Planning Commission recommended approval of development agreement amendment application DAA- 04-05: Barrett-Odishoo.

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. ADOPTION OF DEVELOPMENT AGREEMENT AMENDMENT. The Planning Commission hereby recommends to the City Council adoption of the modified Development schedule for MP-02-06 & MC 04-13: Barrett-Odishoo; attached to this resolution as Exhibit B.

SECTION 2. EXCEPTION TO LOSS OF BUILDING ALLOTMENT. The project applicant has submitted necessary planning applications to pursue development. Delays in the project processing have occurred due to the City's request to change off-site improvement commitments which resulted in a need to modify the project's improvement plans. Based on the findings required in Section 18.78.125 of the Municipal Code, the Planning Commission recommends approval of the development agreement amendment to allow for a three month extension of time, or Exception to Loss of Building Allotment.

PASSED AND ADOPTED THIS 13TH DAY OF JUNE 2006, AT A REGULAR MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

RALPH LYLE, Chairman

EXHIBIT "B"
DEVELOPMENT SCHEDULE
MP-02-22 and MC-04-13: Barrett-Odishoo
VILLAS OF SAN MARCOS L.L.C.
FY 2005-2006 (5 units) 2006-07 (13 units), FY 2007-08 (5 units), FY 2008-09 (13 units)

I. SUBDIVISION AND ZONING APPLICATIONS	
Applications Filed:	August 23, 2004
II. SITE REVIEW APPLICATION	
Application Filed:	August 23, 2004
III. FINAL MAP SUBMITTAL	
Map, Improvements Agreement and Bonds:	
FY 2005-06 (5 units)	September 30, 2005
FY 2006-07 (13 units)	July 30, 2006
FY 2007-08 (5 units)	July 30, 2007
FY 2008-09 (13 units)	July 30, 2008
IV. BUILDING PERMIT SUBMITTAL	
Submit plans to Building Division for plan check:	
FY 2005-06 (5 units)	November 30, 2005
FY 2006-07 (13 units)	August 15, 2006
FY 2007-08 (5 units)	August 15, 2007
FY 2008-09 (13 units)	August 15, 2008
V. BUILDING PERMITS	
Obtain Building Permits	
FY 2005-06 (5 units)	June 30, 2006 March 31, 2006
FY 2006-07 (13 units)	September 30, 2006
FY 2007-08 (5 units)	September 30, 2007
FY 2008-09 (13 units)	September 30, 2008
Commence Construction:	
FY 2005-06 (5 units)	September 30, 2006 June 30, 2006
FY 2006-07 (13 units)	April June 30, 2007
FY 2007-08 (5 units)	April June 30, 2008
FY 2008-09 (13 units)	April June 30, 2009

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 17 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

PLANNING DEPT.
MAY 11 2006
CITY OF MORGAN HILL

May 10, 2006

Community Development Department
Planning Division
17555 Peak Ave
Morgan Hill, CA 95037

Re: Letter of Request for Extension of Time/ Exception to Loss of Building Allocation

Dear Planning Division:

The reason for this letter of request for extension of time is due to the fact that the Public Works department has delayed the review process of final map by two months.

The public works dept has changed the off site improvement requirements which has required the developer to pursue a new off site improvement easement. I would also like to point out that the off site improvement requirement originally required, which was Barret/Chang, has been completed and was done so within the initial time frame.

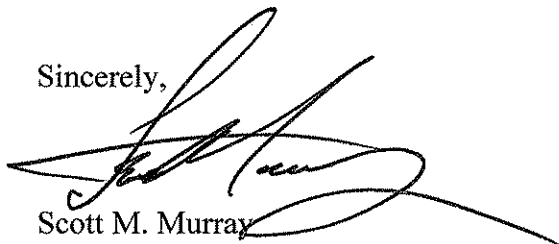
The amount of time we are requesting is a six month time extension.

Hanna & Brunetti, Civil Engineers were responsible for submitting the plans for review. They provided the following chronology of events:

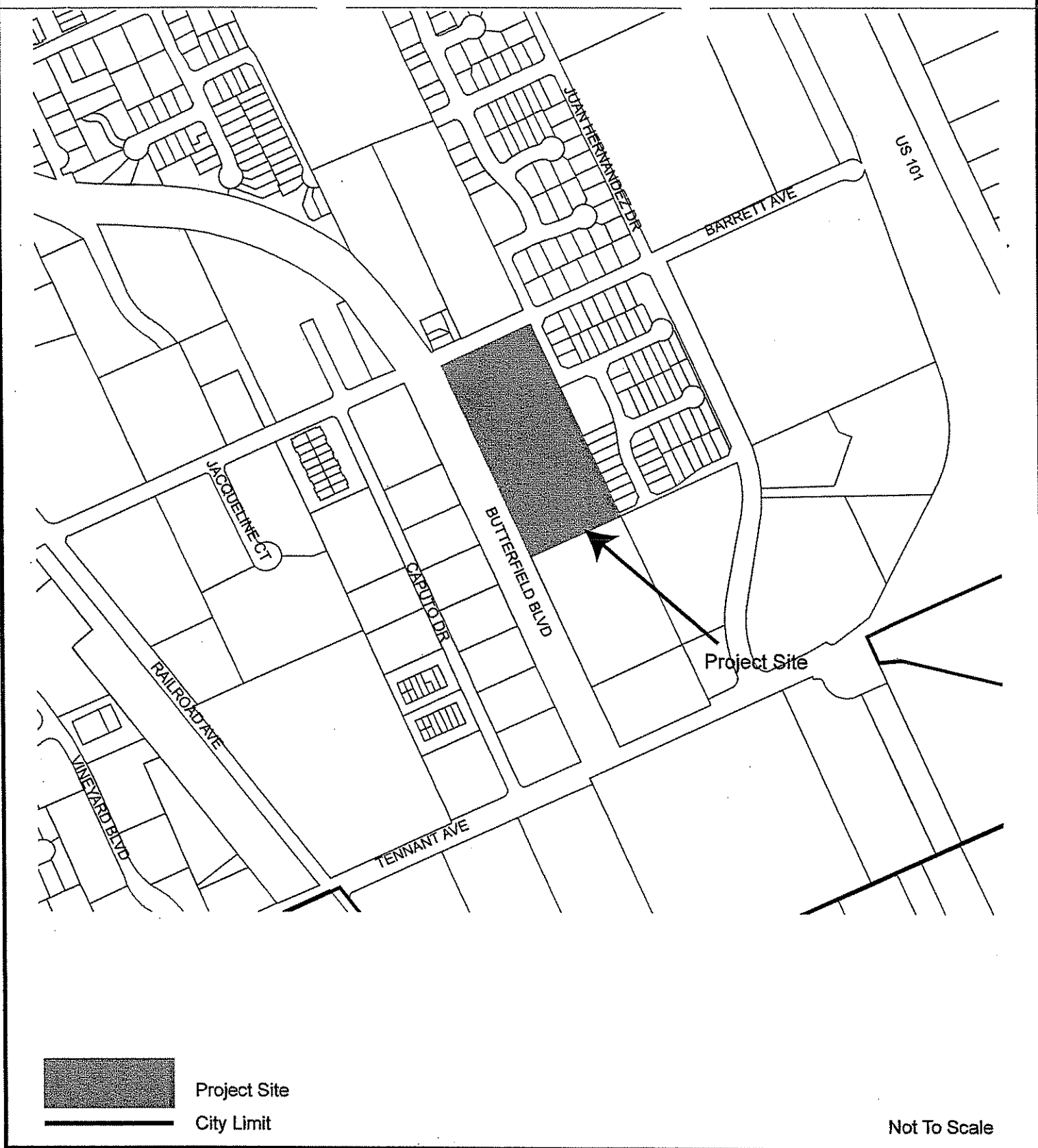
- a. First city plan check comments were received on 01/14/06
- b. Response to first plan check comments was on 01/25/06
- c. City changed off site improvements on 04/27/06

We have started the process for the new off site improvement and have contacted the owner. We plan to have the legal description completed and signed by the owner by May 15, 2006 and turned into Public Works for final map approval. We look forward to completing the first and second phases 18 out of 36 units (Phase 1 and 2 out of 3 phases total) as soon as possible. Thank you for your consideration and cooperation in this matter.

Sincerely,



Scott M. Murray



CITY OF MORGAN HILL

Prepared by Community Development Department

VICINITY MAP

DA-04-05: Barrett-Odishoo



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